

ATTORNEY GENERAL
DEPARTMENT OF JUSTICE

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

August 5, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

New Hampshire Revised Statute Annotated ("RSA") 654:11, a STATUTE related to applications to the supervisor of the checklist, most recently amended by Laws of 2003 Chapter 289 and previously amended by the chapters cited below.

Dear Voting Section Chief:

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 654:11, a STATUTE related to applications to the supervisor of the checklist, most recently amended by Laws of 2003 Chapter 289 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

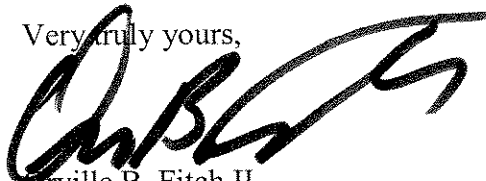
- a) Chapter 289 (2003) amending RSA 654:11 is attached. (Exhibit 654:11 A)
- b) Chapter 436 (1979) recodifying RSA 55:09-b as RSA 654:11 is attached. (Exhibit 654:11 B)
- c) The changes made by amendments to RSA 654:11 are as follows:

1. Chapter 289 (2003) replaces the phrase “...*they are of the opinion...*” with “...*it is established that it is more likely than not...*” and makes corrections for gender-neutrality
 2. Chapter 436 (1979) recodified RSA 55:09-b as RSA 654:11
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.
- The legislature through a bicameral process passed law to create Chapter 289 (Exhibit 654:11 A). The bill was signed into law (by the Governor) on July 18, 2003, pursuant to New Hampshire Constitution Part Second, Article 44.
- i) Adoption dates:
1. Chapter 289 (2003) adopted July 18, 2003
 2. Chapter 436 (1979) adopted June 25, 1979
- j) Effective dates:
1. Chapter 289 (2003) effective September 1, 2003
 2. Chapter 436 (1979) effective July 1, 1979
- k) The changes have been enforced.
- l) The changes affect the entire State of New Hampshire.
- m) The purpose for the changes are as follows:

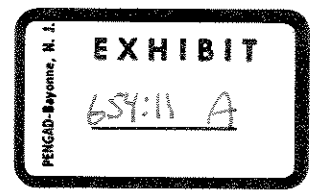
1. The purpose of the Chapter 289 (2003) change is state the standard by which supervisors of the checklist may deny a person's request they be added to the checklist from the phrase ("*unless [the supervisors] are of the opinion*") to the standard applied by the courts, the typical civil standard of proof, ("*it is established that it is more likely than not*") and to make the statute gender-neutral. This change clarified the standard.
 2. The purpose of the Chapter 436 (1979) change is to recodify RSA 55:09-b as RSA 654:11.
- n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. 42 U.S.C. § 1973 (c). They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). "(T)he ability of minority groups ... to elect their choices to office" will not be diminished. *Beer v. U.S.*, 425 U.S. 130, 141 (1976).
- o) None known.
- p) RSA 654:11 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 654:11 C. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 654:11 D is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov



CHAPTER 289

HB 627-FN - FINAL VERSION

25mar03... 0694h

25mar03... 0946h

05/22/03 1640s

24jun03... 2155CofC

30jun03... 2316eba

2003 SESSION

03-0294

03/10

HOUSE BILL **627-FN**

AN ACT relative to domicile for voting purposes, penalties for voter fraud, and access to preserved ballots.

SPONSORS: Rep. Drisko, Hills 46; Rep. Lockwood, Merr 35; Rep. Naro, Graf 15; Rep. Whalley, Belk 31; Sen. Roberge, Dist 9

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill:

- I. Establishes civil penalties for wrongful voting.
- II. Modifies procedures for voter registration and absentee voting.
- III. Modifies the laws concerning domicile as it relates to voting and eligibility for office.
- IV. Exempts preserved ballots from RSA 91-A, the right-to-know law.

This bill is a request of committee established by 2002, 15.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears ~~[in brackets and struck through]~~

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

25mar03... 0694h

domiciled in this city/town.

I understand that a person can claim only one state and one city/town as his or her domicile at a time. A domicile is that place, to which upon temporary absence, a person has the intention of returning. By registering or voting today, I am acknowledging that I am not domiciled in any other state or any other city/town. I understand that if I am domiciled in another state or city/town, I may be entitled to vote in elections held within that state or city/town by absentee ballot.

In declaring New Hampshire as my domicile, I am subject to the laws of the State of New Hampshire which apply to all residents, including laws requiring me to register my motor vehicles and apply for a New Hampshire driver's license within 60 days of becoming a resident.

In declaring New Hampshire as my domicile, I realize that I may be forfeiting benefits or rights, including the right to vote in another state.

If I have any questions as to whether I am entitled to vote in this city/town, I am aware that a supervisor of the checklist is available to address my questions or concerns.

I acknowledge that I have read and understand the above qualifications for voting and do hereby swear, under the penalties for voting fraud set forth below, that I am qualified to vote in the above-stated city/town, and, if registering on election day, that I have not voted and will not vote at any other polling place this election."

Date Signature

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

289:26 Registering at the Polling Place; Election Day Registration. Amend RSA 654:7-a, II to read as follows:

II. Any person whose name is not on the checklist but who is otherwise a qualified voter shall be entitled to vote by requesting to be registered to vote at the polling place on election day. The voter may then vote at that election. The applicant ~~[may]~~ shall be required to produce appropriate proof of qualifications as provided in RSA 654:12. ~~[The applicant shall complete an election day affidavit which shall be prescribed by the secretary of state, and which shall contain the following written oath or affirmation:~~

~~"I do hereby certify under penalty of perjury that to the best of my knowledge, I am a qualified voter, and that I am not disqualified on any ground from voting, and I have not voted and will not vote at any other polling place this election."~~

~~(Signature of Applicant)~~

289:27 Voter Registration in Cities. Amend RSA 654:8-a, I to read as follows:

I. Any **person** qualified **as a** voter in a city whose name does not appear on the checklist where registration is required because the voter's voting ~~[residence]~~ **domicile** has changed from one ward in the city to another ward in the same city, and who is otherwise registered to vote in the election, may change voter registration at the office of the city clerk. A change in voter registration under this section shall be made no later than the final date set for correcting the checklist in the city. The city clerk ~~[may]~~ shall require the voter to provide acceptable proof of identification and acceptable proof of ~~[residence]~~ **domicile**.

289:28 Application to Supervisors. Amend RSA 654:11 to read as follows:

654:11 Application to Supervisors. When the supervisors of the checklist receive a registration form from the town or

city clerk or when an applicant submits the form to said supervisors in person at a session for the correction of the checklist, the supervisors of the checklist shall cause his *or her* name to be added to the checklist, unless ~~[they are of the opinion]~~ **it is established that it is more likely than not** that the applicant is not qualified to vote in the city or town under RSA 654:1 through 654:6. All decisions of the supervisors of the checklist shall be made by majority vote thereof.

289:29 Determining Qualifications of Applicant. Amend RSA 654:12 to read as follows:

654:12 Determining Qualifications of Applicant.

I. When determining the qualifications of an applicant, the supervisors of the checklist, or the town or city clerk, ~~[may]~~ **shall** require the applicant to present proof of citizenship, age, and domicile, as provided in the following categories:

(a) CITIZENSHIP. The supervisors of the checklist, or the town or city clerk, shall accept from the applicant any one of the following as proof of citizenship: the applicant's birth certificate, passport, naturalization papers if the applicant is a naturalized citizen, a citizenship affidavit, or any other reasonable documentation which indicates the applicant is a United States citizen. The citizenship affidavit shall be in the following form:

Date: _____

CITIZENSHIP AFFIDAVIT

Name: _____

Name at birth if different: _____

Place of birth: _____

Date of birth: _____

Date and Place of Naturalization: _____

~~[I swear and affirm that I am a United States citizen.]~~

~~I further swear or affirm, under penalty of perjury, that the information above is true and correct to the best of my knowledge and belief.]~~

I hereby swear and affirm, under the penalties for voting fraud set forth below, that I am a United States citizen and that to the best of my knowledge and belief the information above is true and correct.

(Signature of applicant)

~~[The penalty for perjury is a class B felony with a maximum sentence of imprisonment not to exceed 7 years and/or a fine not to exceed \$4,000.]~~

In accordance with RSA 659:34, the penalty for knowingly or purposefully providing false information when registering to vote or voting is a class A misdemeanor with a maximum sentence of imprisonment not to exceed one year and a fine not to exceed \$2,000. Fraudulently registering to vote or voting is subject to a civil penalty not to exceed \$5,000.

On the date shown above, before me, _____ (print name of notary public, justice of the peace, election officer), appeared _____ (print name of person whose signature is being notarized), (known to me or satisfactorily proven (circle one)) to be the person whose name appears above, and he or she subscribed his or her name to the foregoing affidavit and swore that the facts contained in this affidavit are true to the best of his or her knowledge and belief.

654:11 B

14. Coast and Geodetic Survey, and Public Health Service, and all reserve components thereof, while in active service.

including persons (other than members of the armed forces) employees or members of crews of vessels documented under the laws of the United States, or of vessels owned by the United States, or of vessels of the United States registry under charter to or control of the United States, and other than members of the armed forces) enrolled with the United States for employment, or for training for employment, or maintained by the United States for emergency relief service, as officers or members of crews of any such vessels, but does not include persons so employed or enrolled for such employment or for training for such employment, or maintained for such emergency relief service, on the great lakes or the inland waterways.

(c) Civilian employees of the United States government, including the peace corps, serving outside the territorial limits of the several states of the United States and the District of Columbia, whether or not the employee is subject to civil service laws and the Classification Act of 1949, and whether or not paid from funds appropriated by the Congress.

(d) Members of religious groups or welfare agencies assisting members of the armed forces, who are officially attached to and serving with the armed forces.

(e) The spouses or dependents of any person described in subparagraph (a), (b), (c), or (d) when residing with or accompanying them.

654:5 Disqualification for Felony. A person sentenced for a felony shall forfeit his rights as provided in RSA 607-A:2.

654:6 Disqualification for Bribery or Intimidation. Any person convicted of bribery or intimidation relating to elections under RSA 659:40 shall thereafter be forever disqualified from exercising the right to vote, except that the Supreme Court may, on notice to the attorney general, restore the privileges of a voter to any person who may have forfeited them by conviction of such offenses.

General Voter Registration

654:7 Voter Registration Form. A standard registration application form shall be used throughout the state. The registration form shall be 4 inches by 6 inches and shall be made in triplicate. The secretary of state shall provide for the preparation of the voter registration form which shall be in substantially the following form:

VOTER REGISTRATION CARD (Please print or type)

1. Name	Last	First	Middle Initial
2. Party Affiliation (if any)			
3. Address	Street		
	City	County	ZIP
4. Birth Place	City	State	

5. If a naturalized citizen, give name of court where and date when naturalized _____

6. Date of Birth _____
(Month/Date/Year)

7. Date of Registration _____

8. Place last registered to vote, if not a new registrant _____

I hereby swear, under penalty of perjury, that the answers to the questions above are true and correct to the best of my knowledge and belief.

(Signature of Applicant)

654:8 Application to Town or City Clerk. Any person who has his domicile in any town or city in this state and whose name does not appear on the checklist of said town or city may apply to the town or city clerk for the purpose of having his name added thereto by filling out the form provided for in RSA 654:7. The office of the town or city clerk shall have the power to accept applications from such persons under the following conditions:

I. The supervisors of the checklist shall determine the qualifications of voters as provided in RSA 654:12.

II. The supervisors of the checklist may issue guidelines to the town clerk for the taking of evidence of qualifications presented by applicants.

III. No application hereunder shall be accepted after the last meeting of the supervisors of the checklist before an election.

IV. Such application shall be made during the regular office hours of the town or city clerk.

654:9 Forms to be Forwarded. The town or city clerk shall present to the next meeting of the supervisors of the checklist the triplicate registration forms of all persons making application to him since the previous meeting of said supervisors.

654:10 Exemption. The provisions of RSA 654:8 and 654:9 shall apply in all cities and in all towns unless, upon a vote at a town meeting, a town chooses to exempt itself from such requirements. In a town which is exempt from the provisions of RSA 654:8 and 654:9, the town clerk shall have none of the powers and duties provided for therein, which powers shall be exercised by the supervisors of the checklist, unless and until at a subsequent annual town meeting the town votes to rescind said exemption.

654:11 Application to Supervisors. When the supervisors of the checklist receive a registration form from the town or city clerk or when an applicant submits the form to said supervisors in person at a session for the correction of the checklist, the supervisors of the checklist shall cause his name to be added to the checklist, unless they are of the opinion that the applicant is not qualified to vote in the city or town under RSA 654:1 through 654:6. All decisions of the supervisors of the checklist shall be made by majority vote thereof.

654:12 Determining Qualifications of Applicant.

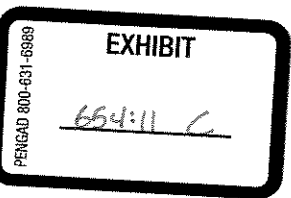
I. When determining the qualifications of an applicant, the supervisors of the checklist may require the applicant to present the following:

- His birth certificate;
- His naturalization papers if he is a naturalized citizen;



U.S. Department of Justice

Civil Rights Division



JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

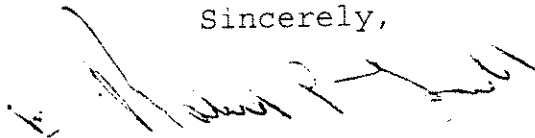
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

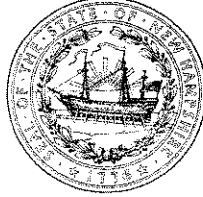
Sincerely,

A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

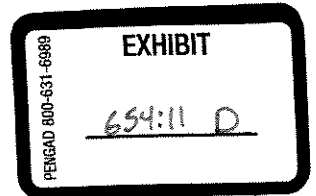
Joseph D. Rich
Chief, Voting Section

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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CONCORD, NEW HAMPSHIRE 03301-6397



KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov